


ORDERED.

Dated: September 10, 2018


Catherine Peek McEwen
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION
flmb.uscourts.gov

In re:

Crofton & Sons, Inc.,

Case No. 8:14-bk-04208-CPM

Debtor.

Chapter 11

ORDER TO SHOW CAUSE WHY CASE SHOULD NOT BE CONVERTED

THIS CASE came on for hearing on September 6, 2018, for consideration of applications for compensation for professional services and reimbursements of expenses (the “Applications”) filed by BDO USA, LLP (“BDO”) and Hahn Loeser & Parks, LLP (“Hahn Loeser”) (Docs. 929 & 930, respectively). At the hearing, the Court noted that a review of the most recently filed quarterly operating report (Doc. 933), for the three-month period ending on June 30, 2018, reflects total payments to unsecured creditors of \$821,963.58. The Court then compared this figure to the approximately \$2.5 million total requested compensation by BDO and Hahn Loeser since the inception of this case. The referenced quarterly report also shows a remaining cash balance of \$558,365.85, nearly half of which would be consumed by the Applications under consideration were

the Court to approve them in full. At the hearing, these professionals projected “conservatively” that after the professionals are paid for winding up this case, there will be only \$50,000.00 left for distribution to unsecured creditors.

Furthermore, the Court noted that certain charges appearing in the Applications indicate not only that the applicants failed to exercise appropriate “billing judgment,”¹ but that they also failed to review the Applications to exclude (or identify as “no charge”) entries for what the Court finds are clearly improper charges. For example, BDO’s most recent application includes several entries for seemingly clerical tasks, such as “Make deposits” at a rate of \$425/hour, “Draft check for AT&T” at \$360/hour, “Record Coogle deposit” at \$360/hour, “Accounting – enter Coogle Deposit into system” at \$360/hour, and “Open new Trust Bank Account” at \$425/hour. As concerning are itemized entries by Hahn Loeser for (i) tasks covered by a contingency fee agreement, such as “Revise settlement agreement with D. Coogle,” “Prepare motion to approve compromise” and “Revise Rule 9019 motion” all at \$565/hour; (ii) tasks that should be covered as part of the firm’s secretarial overhead expense, e.g., “Exchange e-mails ... regarding rescheduling ... meeting” at \$565/hour, “Prepare letter . . . regarding changing . . . invoice address” at \$245/hour, and “Telephone conference with CourtSolutions to schedule . . . telephonic appearance for court hearing” at \$245/hour; and (iii) tasks identified as “Attention to updating electronic pleadings bible” (whatever that means), which appear multiple times at \$245/hour.² Accordingly, it is

¹ See *In re Blue Stone Real Estate Constr. and Dev. Corp.*, 487 B.R. 573, 577 (Bankr. M.D. Fla. 2013) (describing such judgment as requiring professionals to exclude excessive, unnecessary, or redundant hours from their fee applications).

² The Court has not conducted a line-by-line review of the Applications. Thus, the examples given are not meant to be limiting.

ORDERED that representatives of BDO and Hahn Loeser, along with Laurence V. Goddard, Trustee for The Creditor Trust of Crofton and Sons, Inc., and members of the Trustee's Advisory Board are directed to appear before the Court on September 26, 2018, at 9:30 a.m., in Courtroom 8B, 801 North Florida Avenue, Tampa, Florida 33602, to show cause why the Court should not find "cause" to convert this case to a case under chapter 7 in accordance with 11 U.S.C. §§ 1112 and 105.³

The Clerk is directed to serve a copy of this order on interested non-CM/ECF filers.

³ Should the Court convert this case to a case under chapter 7, the chapter 7 trustee can determine if it is appropriate to seek disgorgement of any fee awards previously made to BDO and/or Hahn Loeser that may be deemed excessive or otherwise improper.